

**AMENDED AGREEMENT AND
SECRETARY'S ORDER**

BETWEEN

**DEPARTMENT OF NATURAL
RESOURCES and ENVIRONMENTAL
CONTROL**

AND

**BLESSING GREENHOUSES AND
COMPOST FACILITY**

EFFECTIVE

July 14, 2014

AMENDED AGREEMENT AND SECRETARY'S ORDER

This AMENDED AGREEMENT AND SECRETARY'S ORDER, (Amended Agreement) is entered into between the Department of Natural Resources and Environmental Control (Department) and Blessing Greenhouses and Compost Facility (Blessing), additionally jointly referred to as Parties.

WHEREAS, Blessing currently owns and operates a composting facility located approximately 5 miles northeast of Milton, Delaware; and

WHEREAS, the Blessing composting operation involves the composting of, among other things, animal manure, food processing waste, dissolved air floatation solids, hatchery waste, poultry offal, poultry mortalities, feathers and sewage sludge from wastewater treatment facilities into a "Class A Exceptional Quality" (EQ) compost; and

WHEREAS, on March 29, 2010, the Department issued Blessing Notice of Violation 10-SWD-03 (NOV), requiring steps be taken at Blessing including but not limited to, ensuring that the composting operation was not impacting surface and groundwater or causing violations of state or federal drinking water standards and the State of Delaware's *Regulations Governing Storm Water Discharges Associated with Industrial Activities*; and

WHEREAS, on September 14, 2010, a letter was sent to Blessing reiterating and updating NOV requirements that were still outstanding; and

WHEREAS, on October 21, 2010, the Department issued a letter to Blessing indicating that State Permit Number DM 0014/06 would not be renewed unless specific requirements were met including, but not limited to, complying with NOV-10-SWD-03 and ensuring that a bond of \$10,000 was in place; and

WHEREAS, as Blessing still had not complied with NOV requirements, on December 30, 2010, the Department issued a letter requiring Blessing to install a network of groundwater monitoring wells and monitor the wells for a specific list of parameters in order to have a path forward to comply with the NOV and mitigate concerns that composting activities were impacting surface and groundwater; and

WHEREAS, on December 30, 2010, the Department issued a letter indicating that storm water improvements must be made at the facility; and

WHEREAS, on January 1, 2011, a permit renewal of one year was granted to Blessing giving Blessing an opportunity to correct compliance deficiencies while remaining in operation, complying with the NOV and resolving concerns that composting activities were impacting groundwater; and

WHEREAS, groundwater monitoring proposals prepared by Duffield Associates, Inc. (Duffield) on behalf of Blessing were submitted to the Department on February 17, 2011, entitled, "Groundwater Evaluation Services" and on April 6, 2011, entitled, "Groundwater Monitoring Plan; and

WHEREAS, a report submitted by Duffield on behalf of Blessing dated October 21, 2011, indicated that several wells are likely impacted by composting operations; and

WHEREAS, on October 25, 2011, the Department issued Blessing a letter summarizing uncorrected items from the NOV that remained outstanding; and

WHEREAS, on December 2, 2011, the Department issued Blessing a letter indicating that Blessing's distributing and marketing (D&M) permit would expire on December 31, 2011, thus rendering Blessing unauthorized to bring onto the Blessing facility any materials regulated under State Permit Number DM 1102-S-03 (this Permit superseded State Permit Number DM 0014/06) and further that compostable material and/or bulking material may not be added to the precompost pile at the Blessing facility without written approval from the Department; and

WHEREAS, Blessing had initially entered into an Agreement and Secretary's Order (Initial Agreement) with the Department effective March 19, 2012 to achieve compliance with the NOV and remedy all outstanding compliance items; and

WHEREAS, on June 29, 2012, Blessing submitted a revised notice of intent (NOI) and storm water pollution prevention plan (SWPPP) that was authorized by the Department on July 18, 2012; and

WHEREAS, pursuant to the Initial Agreement, both Blessing and the Department had agreed to adopt an interim facility management plan, more fully delineated therein, to effectuate the purposes of the Initial Agreement and further to diligently pursue timely and efficient performance of the actions identified therein; and

WHEREAS, it was subsequently determined that Blessing was experiencing difficulty in timely achieving the Interim Compliance Measures as expressly stipulated in Section II of the Initial Agreement, adversely affecting Blessing's ability to effectively reduce the remaining amount of composted material currently stored on-site; and

WHEREAS, both Blessing and the Department agree that Blessing needs to possess the ability to continually move finished product from the facility to facilitate the reduction of the amount of compostable and composted material stored at the facility; and

WHEREAS, both Blessing and the Department agree that the best practical approach to achieve regulatory compliance would be to modify the Initial Agreement by creating the Amended Agreement, which, when executed by both Blessing and the Department, will replace the Initial Agreement in its entirety; and

WHEREAS, both Blessing and the Department agree that the performance of the remedial actions pursuant to this Amended Agreement will achieve improvements in Delaware's water quality; and

WHEREAS, both Blessing and the Department agree that settlement of alleged violations of 7 Del. Admin. §7103, the Department's Guidance and Regulations Governing the Land Treatment of Wastes (Waste Regulations), 7 Del. C. , Chapter 60, Delaware's Regulations Governing Storm Water Discharges Associated with Industrial Activities and Blessing's former DM permit is in the best interest of Blessing, the Department and the public; and further, that execution of this Amended Agreement is the most appropriate means of resolving all such alleged violations.

NOW THEREFORE, the Department and Blessing jointly and mutually agree as follows:

I. APPLICATION AND SCOPE

1. Blessing and the Department expressly stipulate and agree that the provisions of this Amended Agreement do **not** represent a permit, but rather an interim facility management agreement, allowing Blessing to conduct facility management operations, compost materials currently on-site and the sale, shipment or distribution of finished products, solely to eliminate the product physically located thereon, until Blessing completely satisfies the compliance measures, more fully delineated *infra* and additionally obtains a distribution and marketing permit for the facility from the Department or this Amended Agreement is terminated pursuant to Section VII *infra*. Additionally, in the event that Blessing sells or transfers the composting facility, Blessing shall provide written notice to such purchaser or successor-in-interest of the existence of this Amended Agreement, furnishing a copy thereof by first class mail to the Department prior to the sale or transfer. Further, the Department reserves the right to pursue any and all statutory and regulatory remedies to which it is entitled for any violations by Blessing of this Amended Agreement or applicable regulatory standards.
2. Performance of the interim compliance measures delineated in this Amended Agreement does not alleviate or modify Blessings compliance requirements with respect to any/all applicable federal, state or local laws or regulations. Additionally, nothing stipulated in this Amended Agreement shall be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
3. This Amended Agreement shall be for a term as expressly stipulated in Section VII (Termination/Default) *infra*.

II. INTERIM COMPLIANCE MEASURES

4. Within sixty (60) calendar days after the effective date of the Amended Agreement, Blessing shall have completed the following:

Provide the Department with documentary evidence that a bond or acceptable financial assurance mechanism in the amount of \$250,000 acceptable to the Department as evidence by a Department writing is in place. If documentary evidence from a financial analysis of Blessing indicates that a bond or acceptable financial assurance mechanism for \$250,000 is not obtainable, the maximum bond or acceptable financial assurance mechanism obtainable by Blessing shall be in place. Regardless of the results of any financial analysis conducted on Blessing, a minimum bond or acceptable financial assurance mechanism in the amount of \$10,000, as required in Part III of the Guidance and Regulations Governing the Land Treatment of Wastes, shall be in place.

In lieu of obtaining a performance bond executed by a corporate surety, Blessing may elect to deposit with the Department cash or negotiable bonds of the Federal Government or of this State or any other securities acceptable to the Department, to be held in trust and applied to help defray the expenses of properly fulfilling the requirements of this Amended Agreement, in the event the Department determines that Blessing is in default of any of the compliance requirements at any time during the term of this Amended Agreement, pursuant to the stipulations of Section VII *infra*.

5. Within ninety (90) calendar days after the Amended Agreement effective date, Blessing shall have completed the following improvements to the compost facility:
 - a. All compost that is located on pervious surfaces must be placed inside of bunkers with an impervious liner (or alternative containment, after receiving written Department approval) to ensure that storm water and groundwater are not impacted by compost leachate.
6. Within one hundred eighty (180) calendar days after the Amended Agreement effective date, Blessing shall have completed the following improvements to the composting facility:
 - a. All compost in the active composting area (the area on and around the concrete composting pad in the southeast corner of the facility also known as the precompost area) must be placed on the concrete precompost pad. Compost that cannot fit on the concrete pad must be relocated into bunkers with an impervious liner (or alternative containment, after receiving written Department approval) to ensure that storm water and groundwater are not impacted.
 - b. All screened EQ compost stored in bunkers must be covered and protected from rainfall.
7. Within two hundred seventy (270) calendar days after the Amended Agreement effective date, Blessing shall have completed the following improvements to the composting facility:
 - a. Starting at the southwest end of the precompost pad, at minimum an area of 100 feet (west to east) and the width of the pad north to south (approximately 90 feet) must be cleared of all compost and be inspected by the Department for integrity. Within thirty (30) calendar days of receipt of written notice from the Department for repairs required for this compliance measure, Blessing shall make repairs and demonstrate that sections of the concrete pad are impervious to the satisfaction of the Department as evidenced by a Department writing. Repairs to the concrete pad are not required if Blessing notifies the Department of its intent to abandon this portion of the pad for composting.
8. As additional areas of the concrete precomposting pad are cleared of compost, the pad must be cleared to bare concrete, inspected by the Department for integrity and repaired if necessary as determined by the Department. Within thirty (30) calendar days of receipt of written notice from the Department for repairs required for this compliance measure, Blessing shall make repairs and demonstrate that sections of the concrete pad are impervious to the satisfaction of the Department as evidenced by a Department writing. Repairs to the concrete pad are not required if Blessing notifies the Department of its intent to abandon this portion of the pad for composting
9. All composting activities at Blessing must continue to be composted in accordance with 7 Del. Admin.C. §§7301 *et seq.*, and requirements in State Permit Number DM 1102-S-03.

10. Blessing shall conduct groundwater and surface water monitoring during the duration of this Agreement. Groundwater and surface water monitoring shall begin within forty-five (45) calendar days from the effective date of this amended Agreement. Groundwater and surface water shall be monitored every ninety (90) calendar days following the initial groundwater and surface water monitoring sample collection date. Results of the sample analyses shall be submitted to the Department within forty five (45) calendar days of their receipt by Blessing.

All sampling shall be conducted by a qualified third party. Parameters for groundwater and surface water monitoring shall be as follows:

<u>Parameter</u>	<u>Measurement</u>	<u>Sample Type</u>
Depth to Water *	hundredth of feet	In-Situ
Temperature	°C	In-Situ
pH	S.U.	In-Situ
Dissolved Oxygen	mg/kg	In-Situ
Ammonia as N	mg/kg	Grab
Nitrate Nitrogen as N	mg/kg	Grab
Total Nitrogen as N	mg/kg	Grab
Total Phosphorus **	mg/kg	Grab
Total Dissolved Solids	mg/kg	Grab
Specific Conductivity	umhos/cm	Grab
Fecal Coliform *	#/100ml	Grab

* Depth to water and fecal coliform not required in surface water samples.

** Total phosphorus is only required for surface water samples.

NOTE: All groundwater sampling activities shall be performed in compliance with the Department's Field Manual for Groundwater Sampling (March, 1988) and in accordance with procedures approved by the Department.

Water levels shall be measured at all screen intervals to the nearest hundredth of a foot and at minimum, groundwater samples shall be collected and analyzed individually from all screen intervals in monitoring wells in accordance with the following table:

<u>Monitoring Well</u>	<u>Local Id</u>	<u>DNREC Id</u>	<u>Screen Interval</u>
MW-1	MW-1-A-8	235556	8.3-8.6
	MW-1-B-19	235559	19.2-19.5
	MW-1-C-27	235562	27.1-27.4
MW-2	MW-2-A-8	235557	8.2-8.5
	MW-2-B-15	235560	15.2-15.5
	MW-2-C-25	235563	24.5-25
MW-3	MW-3-A-8	235558	7.7-7.9
	MW-3-B-17	235561	16.7-17
	MW-3-C-25	235564	24.6-24.9
MW-4	MW-4-A-8	235551	8-8.3
	MW-4-B-15	235552	14.9-15.2

Additionally, Slaughter Creek shall be continued to be sampled at two locations, one up stream and one downstream of the composting facility for the same parameters and at the same quarterly frequency that the groundwater monitoring wells are sampled. A map and/or GPS locations of the sampling sites shall also be submitted to the Department with the sampling data.

The Department may modify the sampling frequency or location based upon review of continuing or additional analyses.

III. RIGHT OF ENTRY

11. Any authorized representative of the Department, including independent contractors, upon presentation of credentials, shall have a right of entry upon the premises of the Blessing facility in accordance with 7 Del. C. , Chapter 60, for the purposes of monitoring compliance with the provisions of this Amended Agreement. Nothing in this Amended Agreement shall limit the authority of the Department to conduct tests and inspections under applicable statutory and regulatory provisions.

IV. FORCE MAJEURE

12. If any event, including a weather related event, occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Amended Agreement, Blessing shall notify the Department in writing as soon as practicable but in any event within ten (10) calendar days of when Blessing first knew of the event or should have known of the event by the exercise of due diligence. In this notice, Blessing shall specifically reference this paragraph of this Amended Agreement and describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by Blessing to prevent or minimize the delay, and the schedule by which those measures will be implemented. Blessing shall adopt all reasonable measures to avoid or minimize such delays.
13. Failure by Blessing to comply with the notice requirements of paragraph 12 as specified above shall render this Section V voidable by the Department as to the specific event for which Blessing has failed to comply with such notice requirement; and, if voided, it shall be of no effect as to the particular event involved.
14. The Department shall notify Blessing in writing regarding Blessing's claims of a delay or impediment to performance within ten (10) calendar days of the Department's receipt of the Force Majeure notice required under paragraph 12.
15. If the Department agrees that the delay or impediment to performance has been or ever will be caused by circumstances beyond the control of Blessing, including any entity controlled by Blessing, and that Blessing could not have prevented the delay by the exercise of due diligence, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances or such other period as may be appropriate in light of the circumstances. Such stipulation may be entered as a modification to this Amended Agreement by agreement of the Parties. If the Parties cannot agree to an extension of the required deadline(s) for all requirement(s) affected by the delay, then Blessing may invoke Dispute Resolution under Section V of the Amended Agreement with respect to the affected deadline(s). If the Department does not accept Blessing's claim of a delay or impediment to performance, the Department's position shall be binding unless Blessing invokes Dispute Resolution under Section V of this Amended Agreement.

16. Blessing shall bear the burden of proving that any delay of any requirement(s) of this Amended Agreement was caused by or will be caused by circumstances beyond its control, including any entity controlled by Blessing, and that Blessing could not have prevented the delay by the exercise of due diligence. Blessing shall also bear the burden of proving the duration and extend of any delay(s) attributed to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of subsequent date or dates.
17. Unanticipated or increased costs or expenses associated with the performance of Blessing's obligations under this Amended Agreement shall not constitute circumstances beyond Blessing's control or serve as a basis for an extension of time under this Section.
18. Notwithstanding any other provisions of this Amended Agreement, no inference shall be drawn nor presumptions adverse to any Party established as a result of Blessing transmitting a notice of Force Majeure or the Parties' inability to reach agreement.

V. DISPUTE RESOLUTION

19. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Amended Agreement, provided that the Parties shall make a good faith attempt to resolve the matter independent of dispute resolution.
20. The dispute resolution procedure required herein shall be invoked upon the giving of written notice by one of the Parties to this Amended Agreement to the other, advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice and the Parties shall expeditiously schedule a meeting to discuss the dispute informally, not later than fourteen (14) calendar days from the receipt of such notice.
21. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiation shall not extend beyond thirty (30) calendar days from the date of the first meeting between representatives of the Department and Blessing unless the Parties' representatives agree to shorten or extend this period.
22. In the event that the Parties are unable to reach agreement during such informal negotiation period, the Department Secretary shall issue a written decision summarizing the Secretary's position regarding the dispute. The Parties agree that any written decision issued by the Secretary in accordance with this paragraph constitutes an action that substantially affects Blessing's interest as identified in 7 *Del. C.* §6008 and, therefore, intends that such decisions may be appealed to the Delaware Environmental Appeals Board pursuant to 7 *Del. C.* §6008.

23. Where the nature of the dispute is such that more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon the agreement of the Parties.
24. As part of any resolution of any dispute submitted to dispute resolution or any appeal of a permit issued by the Department in accordance with this Amended Agreement, the Parties, by agreement, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Amended Agreement to account for the delay in the work that occurred as a result of dispute resolution or any appeal of a permit issued by the Department in accordance with this Amended Agreement.

VI. GENERAL PROVISIONS

25. This Amended Agreement shall be governed by, and interpreted under, the laws of the State of Delaware.
26. Other Laws. Except as specifically provided by this Amended Agreement, nothing in this Amended Agreement shall relieve Blessing of its obligation to comply with all applicable federal, state, and local laws and regulations. Additionally, Blessing agrees to provide monthly reports to the Department documenting the compliance completion process, including compliance with Paragraph 7 of this Amended Agreement. Monthly reports are due on or before the 15th of the month following the completed reporting period. Furthermore, subject to Section VII, nothing contained in this Amended Agreement shall be construed to prevent, alter, or limit the ability of the Department to seek or obtain other remedies or sanctions available under other federal, state, or local statutes or regulations in response to any violation by Blessing of applicable statutes and regulations.
27. Third Parties
 - a. This Amended Agreement does not limit or affect the rights of Blessing or the Department against any person or entity, not party to this Amended Agreement, nor does it limit the rights of any person or entity, not party to this Amended Agreement against Blessing or the Department except as otherwise provided by law.
 - b. This Amended Agreement shall not be considered to create rights in, or grant any cause of action to, any third party not party to this Amended Agreement.
28. Public Documents. All information and documents submitted by Blessing to the Department pursuant to this Amended Agreement shall be subject to public inspection, unless expressly designated by Blessing as "Business Confidential" and determined by the Department to be business confidential in accordance with 29 Del. C. §10002(1)(2) and 7 Del. Admin. C. §900 (Freedom of Information Act Requests).
29. Notice. Unless otherwise provided herein, notifications to or communications with the Department or Blessing shall be deemed submitted on the date they are postmarked and

sent either by overnight-receipt mail service or by first-class, certified or registered mail, return receipt requested, or on the date that they are hand delivered. Except as otherwise provided herein, when written notification or communication is required by the Amended Agreement, it shall be addressed as follows:

As to Blessing:

Bruce Blessing
Blessing Greenhouses and Compost Facility
P.O. Box 647
Milford, Delaware 19963

As to the Department

Kathy Stiller, Director
Division of Water
Delaware Department of Natural Resources and
Environmental Control
89 Kings Highway
Dover, Delaware 19901


30. Either Party may change either the notice recipient or the address for providing notices to it by serving the other Party with a notice setting forth such new notice recipient or address.
31. This Amended Agreement shall be binding upon all Parties to this Amended Agreement, their successors, and assigns. The undersigned representative of each Party to this Amended Agreement certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.
32. Modification. This Amended Agreement may be modified only by the written consent of the Department and Blessing.
33. Effective Date. The effective date of the Amended Agreement shall be the date last executed by a Party.
34. This Amended Agreement constitutes the entire agreement and between the Parties.

VII. TERMINATION/DEFAULT

35. This Amended Agreement shall terminate upon the occurrence of either (1) Blessing's complete satisfaction of all compliance requirements delineated in this Amended Agreement or (2) the Department's determination that Blessing is in default of any of the compliance requirements at any time during the term of this Amended Agreement. If the former, Blessing shall notify the Department in writing that all compliance requirements have been satisfied. Within thirty (30) calendar days of receipt of said completion notification, the Department shall physically inspect the facility and issue Blessing either a written completion approval or a list of any outstanding activities/requirements that

requires completion before approval can ensue. If the latter, the Department shall provide Blessing written notification of the specific default and allow Blessing thirty (30) calendar days from receipt of default notice to cure said default. Should Blessing fail/refuse to cure the default, such failure shall constitute cause for termination of this Amended Agreement, subjecting Blessing to a Civil Penalty in an amount at the Department's sole discretion not to exceed \$50,000, as liquidated damages, for failure to comply with the interim compliance measures as stipulated in the Amended Agreement. This Civil Penalty will be due and payable to the State of Delaware by submitting a certified or cashier's check to the Department at the address listed in Paragraph 29 of this Amended Agreement. Further, if, as a result of Blessing's default of this Amended Agreement, the State of Delaware assumes control of facility operations, Blessing will be liable for all expenses incurred by the State of Delaware related to the completion of facility management activities pursuant to 7 *Del. C.* §6005 (c).


FOR THE STATE OF DELAWARE



Date: 6/30/14

Collin P. O'Mara, Secretary
Department of Natural Resources
and Environmental Control
89 Kings Highway
Dover, DE 19901

FOR BLESSING GREENHOUSES AND COMPOST FACILITY

By: 

Date: 7-14-2014

Bruce Blessing
Owner
Blessing Greenhouses and Composting Facility
P.O. Box 647
Milford, Delaware 19963

